

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RAYMOND TICKLE)	
Claimant)	
VS.)	
)	Docket No. 250,905
COOK PUMP COMPANY)	
Respondent)	
AND)	
)	
PATRONS INSURANCE)	
Insurance Carrier)	

ORDER

Claimant appeals the August 20, 2002 Award of Administrative Law Judge Jon L. Frobish. Claimant was denied additional benefits after the Administrative Law Judge determined that claimant suffered no permanent impairment as a result of the May 1, 1999 accidental injury. Claimant was awarded the medical treatment received at the time of the accident. This matter was placed on the summary calendar by the Board.

APPEARANCES

Claimant appeared by his attorney, William L. Phalen of Pittsburg, Kansas. Respondent and its insurance carrier appeared by their attorney, Scott J. Mann of Hutchinson, Kansas.

RECORD AND STIPULATIONS

The Appeals Board (Board) has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

What is the nature and extent of claimant's injury? The parties acknowledge claimant's award would be limited to a permanent impairment of function to the body as a whole as claimant has returned to work at a wage which is comparable to what he was earning at the time of the accident. Therefore, a work disability is not in dispute.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

Claimant suffered accidental injury on May 1, 1999, while working for respondent. Claimant testified that while picking up a part from a box, he felt a sudden pain, with a pop in his thoracic spine, just below the shoulders. However, both Dr. Mills and Dr. Prostic testified regarding the emergency room records created contemporaneous with claimant's injury. The emergency room records show a history of claimant's pain being limited to his right rib area. X-rays of claimant's right ribs taken at that time were read as normal.

Claimant was examined in the emergency room by Dr. Gillis and was told to take Advil and to go to his family doctor. On May 6, 1999, claimant was examined by Dr. Balson, his family physician. Dr. Balson's medical report also indicated pain in claimant's right lower ribs. Claimant was returned to work without restrictions on May 7, 1999. However, claimant did not return to work for respondent and was terminated on May 13, 1999. After leaving respondent, claimant worked for a period of time with the City of Independence in its street department and then went to work for Dual County Trash. At the time of the regular hearing, claimant was working for Wal-Mart in the receiving area, unloading trucks.

Claimant was examined by two physicians. He was referred by his attorney to orthopedic surgeon Edward J. Prostic, M.D., on October 12, 2001. At that time, claimant had complaints of pain in his spine from his neck to his hips, with limited range of motion. Dr. Prostic took x-rays which revealed deformities at the T7, T8 and T9 levels. Dr. Prostic was unsure whether the deformities occurred as a result of compression fractures or from what he described as Scheuermann's disease. Scheuermann's disease was described as a developmental problem which occurred in teenagers. It resulted in a series of wedge-shaped vertebrae. Dr. Prostic testified that claimant suffered either a possible fracture or a possible aggravation of his preexisting condition as a result of the May 1, 1999 accident. He also stated that a lumbar spine degenerative condition with possible spondyloarthropathy and disc space narrowing at L5-S1 was a result of the May 1, 1999 accident.

On cross-examination, Dr. Prostic admitted that the records from the Coffeyville Regional Medical Center contemporaneous with the date of accident indicated pain in the right rib cage only. The x-rays taken of the ribs at that time were read as normal. There was no mention of a thoracic or lumbar injury or any pain associated with those areas. Dr. Prostic stated that claimant's condition could be either a compression fracture of the thoracic spine or a possible disc protrusion in the thoracic area, which could result in the rib pain described by claimant.

On cross-examination, Dr. Prostic admitted it would be unusual for claimant to go nearly two years without any medical treatment if he had indeed suffered the compression fractures and the degenerative problems associated with Dr. Prostic's findings. Dr. Prostic found claimant to have suffered a 10 percent impairment to the body as a whole, which consists of 4 percent for loss of range of motion and 6 percent from the three mild compression fractures in the thoracic spine. This impairment rating was assessed using the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.), page 113, table 75. Dr. Prostic also admitted that claimant's release to return to work as of May 10, 1999, was inconsistent with a significant back injury.

Claimant was referred by respondent's attorney for an examination with Philip R. Mills, M.D., board certified in physical medicine and rehabilitation and in electroneurodiagnostic medicine. Dr. Mills examined claimant on May 22, 2002, diagnosing degenerative changes in the lumbosacral spine with possible remote compression fractures. Dr. Mills stated that the widespread degenerative changes in claimant's spine could not be explained on the basis of one injury. He also stated that the compression fractures diagnosed were old. Claimant had undergone an examination in March of 1990 which included a chest x-ray. That chest x-ray displayed mildly exaggerated mid thoracic kyphosis, which is related to mild wedging in the mid thoracic vertebrae. Dr. Mills stated that this mid thoracic kyphosis was a long-term, old development and not likely related to the May 1, 1999 accident. Dr. Mills also testified that the emergency room records contemporaneous with claimant's date of accident did not show any spine complaints. He stated that claimant had no permanent impairment from the 1999 accident. Instead, claimant's entire functional impairment was the result of degenerative, long-term, preexisting problems.

Dr. Mills also noted that during his examination, claimant voiced no lumbar pain complaints. Additionally, there were no lumbar pain complaints or mid back complaints in the emergency room records. The emergency room records contained only right rib complaints.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹

In this instance, the Board finds claimant has failed to prove that he suffered any permanency as a result of the injuries on May 1, 1999. His complaints at the time of the injury are limited to his right rib area, with no lumbar or thoracic spine complaints of any kind. Dr. Prostic acknowledged that the fact that claimant went two years without medical treatment would be inconsistent with claimant's allegations and would be somewhat unusual. He also testified that it would be unusual for someone to suffer three thoracic

¹ See K.S.A. 1998 Supp. 44-501 and K.S.A. 1998 Supp. 44-508(g).

compression fractures from a specific event and not complain of thoracic pain at the time of the accident. The Board finds that the injuries suffered by claimant on May 1, 1999 were to his ribs and did not involve his thoracic or lumbar spine. Therefore, the Board finds claimant has failed to prove that he suffered any permanent injury as a result of the May 1, 1999 accidental injury. Claimant is awarded the medical treatment he received at that time, but denied any permanent disability as a result of those injuries.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated August 20, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Scott J. Mann, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Director, Division of Workers Compensation